

1 SB264
2 172742-1
3 By Senator Livingston
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 17-FEB-16

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8 SYNOPSIS: Under existing law, the Department of Labor
9 may impose civil penalties against an employer for
10 a violation of the child labor law.

11 This bill would allow the Department of
12 Labor to file an action for the collection of civil
13 penalties imposed pursuant to this section against
14 an employer in the circuit court of the county
15 where the violation occurred.

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17 A BILL
18 TO BE ENTITLED
19 AN ACT

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21 To amend Section 25-8-59, Code of Alabama 1975,
22 relating to the Alabama Child Labor Law; to allow the
23 Department of Labor to file an action for the collection of
24 civil penalties imposed pursuant to this section against an
25 employer in the circuit court of the county where the
26 violation occurred.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 25-8-59, Code of Alabama 1975, is
2 amended to read as follows:

3 "§25-8-59.

4 "(a) Any employer who violates this chapter, or who
5 fails or refuses to obey within a reasonable time any lawful
6 order or direction given by the state officials charged with
7 the enforcement of this chapter, and any parent, guardian, or
8 custodian who suffers or permits a person under his or her
9 care or control who is under 19 years of age to work in
10 violation of this chapter, shall be subject to civil penalties
11 in addition to other penalties provided in this chapter.

12 "(b) The department may impose a civil penalty of
13 three hundred dollars (\$300) upon the following determination:
14 An employer has violated a statutory provision of Section
15 25-8-35(17), 25-8-36, 25-8-37, 25-8-38, 25-8-39, 25-8-40,
16 25-8-41, 25-8-44(a), 25-8-44(b), 25-8-45, 25-8-54, 25-8-57,
17 25-8-60, or 25-8-61.

18 "(c) The department may impose a civil penalty of
19 one thousand dollars (\$1,000) to five thousand dollars
20 (\$5,000) upon the following determination: An employer has
21 violated a statutory provision of Section 25-8-33,
22 25-8-35(1)-(16), inclusive, 25-8-43(a), or 25-8-44(d).

23 "(d) In determining the number of violations
24 committed by an employer, the department may assess a separate
25 civil penalty for each individual employee affected by the
26 employer's violation.

1 "(e) In addition, the department may assess more
2 than one civil penalty against an employer with respect to the
3 same adversely affected employee if the employer has violated
4 more than one statutory provision in Act 2009-565.

5 "(f) The employer shall be notified of a civil
6 penalty assessment by the Notice of Violation and Opportunity
7 to Show Cause which shall be sent to the employer.

8 "(g) The Notice of Violation and Opportunity to Show
9 Cause shall provide all of the following:

10 "(1) The total civil penalty assessed.

11 "(2) The right of the employer to request in writing
12 a hearing to show cause why the civil penalty should not be
13 assessed.

14 "(3) An advisement that no hearing shall be granted
15 unless a written request for a hearing is received by the
16 department within 30 days from the date of issue of the
17 notice.

18 "(4) The right of the employer to waive the right to
19 request a hearing and to respond in writing to the notice
20 within 30 days of the issue date of the notice.

21 "(h) Any employer who seeks to contest a civil
22 penalty assessment shall file, within 30 days from the date
23 the Notice of Violation and Opportunity to Show Cause was
24 issued, a written request for an opportunity to be heard which
25 shall clearly state the reasons for such request, including
26 facts to demonstrate that no violation has occurred.

1 "(i) If the commissioner or his or her designee
2 determines that the employer has stated adequate facts or
3 legal grounds to warrant a hearing, the commissioner or his or
4 her designee shall provide written notice of the hearing to
5 show cause why a civil penalty should not be assessed and
6 shall mail written notice to the employer of the date, time,
7 and place of the hearing. Such determination shall be within
8 the discretion of the commissioner or his or her designee. The
9 notice shall inform the employer of its rights in the hearing
10 including the following:

11 "(1) The right to be represented by any person,
12 including an attorney.

13 "(2) The right to present documentary evidence and a
14 written argument in support of the employer's position.

15 "(j) A request for postponement of a hearing so
16 scheduled shall only be granted where the rights of an
17 employer would be substantially prejudiced by the denial of
18 the request or in a medical emergency. Only the commissioner
19 or his or her designee has discretion to grant such requests.

20 "(k) Following a hearing or after the employer has
21 waived the right to request a hearing, the commissioner or his
22 or her designee may uphold or modify the civil penalty
23 assessment. Such determination shall be within the sole
24 discretion of the commissioner or his or her designee.

25 "(l) If the employer requests a hearing but the
26 commissioner or his or her designee denies the request for a

1 hearing, the total civil penalty assessed in the notice shall
2 be the final civil penalty.

3 "(m) If the employer does not request a hearing or
4 respond in writing to the notice, the total civil penalty
5 assessed in the notice shall be the final civil penalty unless
6 otherwise modified by the commissioner or his or her designee.

7 "(n) The department may file an action for the
8 collection of civil penalties imposed pursuant to this section
9 against an employer in the county where the violation
10 occurred.

11 "~~(n)~~ (o) All moneys received from the assessment of
12 any penalty pursuant to this section shall accrue to the State
13 General Fund.

14 "~~(o)~~ (p) In addition to the civil penalties provided
15 for in subsection (b), an employer who violates Act 2009-565
16 may be deemed guilty of a Class B or Class C misdemeanor. A
17 first conviction shall be deemed a Class C misdemeanor. A
18 second or subsequent conviction shall be deemed a Class B
19 misdemeanor.

20 "~~(p)~~ (q) In addition to civil penalties provided for
21 in subsection (c), an employer who is found in violation of
22 subsection (c) involving serious physical injury to or death
23 of a minor may be deemed guilty of a Class A misdemeanor or
24 Class C felony. A first conviction shall be deemed a Class A
25 misdemeanor. A second or subsequent conviction shall be deemed
26 a Class C felony."

1 Section 2. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.